

## § 7.3001

## 12 CFR Ch. I (1–1–02 Edition)

Currency (Comptroller), a state, or a legally authorized state official may declare a day a legal holiday if emergency conditions exist. That day is a legal holiday for national banks or their offices in the affected geographic area (*i.e.*, throughout the country, in a state, or in part of a state). Emergency conditions include natural disasters and civil and municipal emergencies (*e.g.*, severe flooding, or a power emergency declared by a local power company or government requesting that businesses in the affected area close). The Comptroller issues a proclamation authorizing the emergency closing in accordance with 12 U.S.C. 95 at the time of the emergency condition, or soon thereafter. When the Comptroller, a State, or a legally authorized State official declares a legal holiday due to emergency conditions, a national bank may temporarily limit or suspend operations at its affected offices. Alternatively, the national bank may continue its operations unless the Comptroller by written order directs otherwise.

(c) *Ceremonial closings.* A state or a legally authorized state official may declare a day a legal holiday for ceremonial reasons. When a state or a legally authorized state official declares a day to be a legal holiday for ceremonial reasons, a national bank may choose to remain open or to close.

(d) *Liability.* A national bank should assure that all liabilities or other obligations under the applicable law due to the bank's closing are satisfied.

[61 FR 4862, Feb. 9, 1996, as amended at 66 FR 34791, July 2, 2001]

### § 7.3001 Sharing space and employees.

(a) *Sharing space.* A national bank may:

(1) Lease excess space on bank premises to one or more other businesses (including other banks and financial institutions);

(2) Share space jointly held with one or more other businesses; or

(3) Offer its services in space owned or leased to other businesses.

(b) *Sharing employees.* When sharing space with other businesses as described in paragraph (a) of this section, a national bank may provide, under one or more written agreements among

the bank, the other businesses, and their employees, that:

(1) A bank employee may act as agent for the other business; or

(2) An employee of the other business may act as agent for the bank.

(c) *Supervisory conditions.* When a national bank engages in arrangements of the types listed in paragraphs (a) and (b) of this section, the bank shall ensure that:

(1) The other business is conspicuously, accurately, and separately identified;

(2) Shared employees clearly and fully disclose the nature of their agency relationship to customers of the bank and of the other businesses so that customers will know the identity of the bank or business that is providing the product or service;

(3) The arrangement does not constitute a joint venture or partnership with the other business under applicable state law;

(4) All aspects of the relationship between the bank and the other business are conducted at arm's length, unless a special arrangement is warranted because the other business is a subsidiary of the bank;

(5) Security issues arising from the activities of the other business on the premises are addressed;

(6) The activities of the other business do not adversely affect the safety and soundness of the bank;

(7) The shared employees or the entity for which they perform services are duly licensed or meet qualification requirements of applicable statutes and regulations pertaining to agents or employees of such other business; and

(8) The assets and records of the parties are segregated.

(d) *Other legal requirements.* When entering into arrangements, of the types described in paragraphs (a) and (b) of this section, and in conducting operations pursuant to those arrangements the bank must ensure that each arrangement complies with 12 U.S.C. 29 and 36 and with any other applicable laws and regulations. If the arrangement involves an affiliate or a shareholder, director, officer or employee of the bank:

## Comptroller of the Currency, Treasury

## § 7.4001

(1) The bank must ensure compliance with all applicable statutory and regulatory provisions governing bank transactions with these persons or entities;

(2) The parties must comply with all applicable fiduciary duties; and

(3) The parties, if they are in competition with each other, must consider limitations, if any, imposed by applicable antitrust laws.

### Subpart D—Preemption

#### § 7.4000 Visitorial powers.

(a) *General rule.* (1) Only the OCC or an authorized representative of the OCC may exercise visitorial powers with respect to national banks, except as provided in paragraph (b) of this section. State officials may not exercise visitorial powers with respect to national banks, such as conducting examinations, inspecting or requiring the production of books or records of national banks, or prosecuting enforcement actions, except in limited circumstances authorized by federal law. However, production of a bank's records (other than non-public OCC information under 12 CFR part 4, subpart C) may be required under normal judicial procedures.

(2) For purposes of this section, visitorial powers include:

(i) Examination of a bank;

(ii) Inspection of a bank's books and records;

(iii) Regulation and supervision of activities authorized or permitted pursuant to federal banking law; and

(iv) Enforcing compliance with any applicable federal or state laws concerning those activities.

(b) *Exceptions to the general rule.* Federal law expressly provides special authority for state or other federal officials to:

(1) Inspect the list of shareholders, provided the official is authorized to assess taxes under state authority (12 U.S.C. 62; this section also authorizes inspection of the shareholder list by shareholders and creditors of a national bank);

(2) Review, at reasonable times and upon reasonable notice to a bank, the bank's records solely to ensure compliance with applicable state unclaimed

property or escheat laws upon reasonable cause to believe that the bank has failed to comply with those laws (12 U.S.C. 484(b));

(3) Verify payroll records for unemployment compensation purposes (26 U.S.C. 3305(c));

(4) Ascertain the correctness of federal tax returns (26 U.S.C. 7602); and

(5) Enforce the Fair Labor Standards Act (29 U.S.C. 211).

(c) *Report of examination.* The report of examination made by an OCC examiner is designated solely for use in the supervision of the bank. The bank's copy of the report is the property of the OCC and is loaned to the bank and any holding company thereof solely for its confidential use. The bank's directors, in keeping with their responsibilities both to depositors and to shareholders, should thoroughly review the report. The report may be made available to other persons only in accordance with the rules on disclosure in 12 CFR part 4.

[61 FR 4862, Feb. 9, 1996, as amended at 64 FR 60100, Nov. 4, 1999]

#### § 7.4001 Charging interest at rates permitted competing institutions; charging interest to corporate borrowers.

(a) *Definition.* The term "interest" as used in 12 U.S.C. 85 includes any payment compensating a creditor or prospective creditor for an extension of credit, making available of a line of credit, or any default or breach by a borrower of a condition upon which credit was extended. It includes, among other things, the following fees connected with credit extension or availability: numerical periodic rates, late fees, creditor-imposed not sufficient funds (NSF) fees charged when a borrower tenders payment on a debt with a check drawn on insufficient funds, overlimit fees, annual fees, cash advance fees, and membership fees. It does not ordinarily include appraisal fees, premiums and commissions attributable to insurance guaranteeing repayment of any extension of credit, finders' fees, fees for document preparation or notarization, or fees incurred to obtain credit reports.

(b) *Authority.* A national bank located in a state may charge interest at